Cases that Shaped the Federal Courts

Martin v. Hunter's Lessee

1816

Justice Joseph Story

Federal Judicial Center
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Central Question

Were state courts bound to follow decisions issued by the Supreme Court of the United States?

Historical Context

The relationship between the state and federal governments was one of the primary concerns of the Constitution's framers. The Constitution, however, had relatively little to say about the relationship between state courts and the new Supreme Court of the United States. Article III of the Constitution laid out a menu of cases federal courts could hear, which included those "arising under" the Constitution of the United States, and gave the Supreme Court "appellate jurisdiction, both as to law and fact [in these cases], with such exceptions, and under such regulations as the Congress shall make." The Supremacy Clause of Article VI stated that "the judges in every state shall be bound [by the federal Constitution and laws], anything in the Constitution or laws of any State to the contrary notwithstanding."

Several observers suggested this language would likely permit the Supreme Court to review and overturn the decisions of state court judges. The anonymous Anti-Federalist writing under the penname "Brutus" complained that these powers meant that "[t]he supreme court under this constitution would be exalted above all other power in the government, and subject to no control." But this reading was not inevitable. One could, for example, interpret the language in Article III to permit appellate jurisdiction over federal courts only. Similarly, while the Supremacy Clause bound state court judges, it did not explicitly give the Supreme Court power to enforce state judges' obligation; that power might have rested with another branch of government or the duty might not have been enforceable at all. Finally, it was unclear whether Supreme Court review of the state courts was strictly limited to questions of federal law, or if the Court could also reverse state court decisions on questions of state law if the justices considered the state rulings erroneous.

Legal Debates Before *Martin*

The First Congress appears to have interpreted the Constitution to permit Supreme Court review of state decisions, at least in cases involving federal statutes and constitutional rights. Section 25 of the Judiciary Act of 1789 permitted appeals in several cases of this type. Some major political and legal figures harbored doubts about the appropriateness and constitutionality of this process. Edmund Randolph, the first U.S. Attorney General, wrote a report to Congress just a year after the Judiciary Act's passage critiquing the use of appeals from state courts to the Supreme Court and recommending a different procedure

for channeling appropriate cases into the federal system. However, Congress did not ultimately act on Randolph's suggestions, and the court heard several appeals from state courts in the following years without suggesting that the practice raised any serious constitutional issues.

The Case

The facts of *Martin v. Hunter's Lessee* illustrate some of the legal complexities involved in the interactions between state and federal law in the new nation. Lord Fairfax, a British nobleman living in Virginia, died during the War of Independence. Fairfax left a large tract of land in Virginia to his nephew Denny Martin (who later assumed the Fairfax name). Denny Fairfax was a British subject and had never lived in the United States. It was somewhat unclear whether an "alien" (foreign citizen) could inherit land under Virginia law. State statutes passed in the 1780s attempted to clarify the issue and punish British loyalists by barring aliens from inheriting Fairfax's land. Two treaties with Britain arguably nullified or modified these state laws: The Treaty of Paris (1783), which ended the war with Britain, and Jay's Treaty (1795), which clarified the earlier treaty and established peaceful relations with Britain during a time of upheaval in Europe following the French Revolution. These treaties protected the property interests of British subjects in the United States and American citizens living in the British Empire.

In 1789, Virginia granted ownership rights to part of Fairfax's property to David Hunter on the theory that Denny Fairfax was not legally entitled to inherit the land. Nevertheless, ownership rights to the land remained unclear for years because of the federal treaties. Several speculators, including future Chief Justice John Marshall and his brother, invested in land whose value depended on the validity of the Fairfax inheritance.

The Fairfax and Hunter interests devised a test case in Virginia's courts to resolve the question of the land's ownership. Virginia's Supreme Court determined that Fairfax was not legally entitled to inherit the land and that the federal treaties were not designed to change the basic rules of inheritance in Virginia. In *Fairfax's Devisee v. Hunter's Lessee* (1813), the Supreme Court of the United States reversed this decision, reasoning that the treaties were designed to preserve the property rights of British subjects and trumped any state laws to the contrary. As a matter of procedure, the Court sent the case back to the Virginia courts to issue an order allocating the property according to the decision.

The *Fairfax's Devisee* decision was controversial. The United States was again at war with Britain. Moreover, Justice Joseph Story's opinion for the Court engaged in an analysis of Virginia state law that many states' rights advocates argued overstepped the federal courts' role and compromised state sovereignty. It appears the Supreme Court of Virginia objected to this assertion of federal power. In *Hunter v. Martin* (1815) (Denny Fairfax

died during the suit and his estate's interests were pressed by his heir, Phillip Martin), the Virginia Supreme Court refused to follow the U.S. Supreme Court's ruling. The Virginia Supreme Court held that Section 25 of the Judiciary Act of 1789, the federal law permitting the federal Supreme Court to hear appeals from state courts, was unconstitutional. The court reasoned that the Constitution created a system of dual sovereignty in which the state and federal supreme courts were each the most powerful courts operating within their own governments, but neither was superior to the other. Undaunted, Martin appealed to the Supreme Court of the United States.

The Supreme Court's Ruling

As he had in *Fairfax's Devisee*, Chief Justice Marshall recused himself from the *Martin* appeal. Recusal is a process by which judges remove themselves from deciding a case because of ethical concerns like the potential for a conflict of interest. In this instance, Marshall's land investments stood to gain from a decision in Martin's favor, making it inappropriate for him to rule on the case. Despite his formal recusal, however, some scholars have argued that Marshall likely participated in the formulation of the Court's opinion, which is credited to Justice Joseph Story, another major figure in the Court's early history.

Story's opinion rejected the notion that Virginia held equal sovereignty with the federal government, emphasizing that the Constitution made federal law supreme over state law. Story also stressed that it was important for the nation to have a single, coherent interpretation of the Constitution and federal laws, rather than multiple competing interpretations from multiple different courts. Moreover, if plaintiffs could avoid any chance of federal review of cases that presented federal questions by simply suing in state courts, then defendants would have been deprived of the opportunity to have their case heard by a federal court. While Story did not suggest federal judges were inherently better than their state counterparts, he noted that both the Constitution and the Judiciary Act operated on the presumption that federal courts would be more impartial venues for some cases.

Justice William Johnson concurred in the Court's opinion, but wrote separately to emphasize that the decision, while a necessary result of the supremacy of federal law, did not give the federal courts coercive power over the states. Moreover, although Johnson had disagreed with the court's original ruling in *Fairfax's Devisee*, he argued that federal courts had to be able to review state-court decisions on issues of state law that were related to federal matters, or else the review of the federal issues could be rendered virtually meaningless.

Aftermath and Legacy

The relationship between state and federal courts continued to provide fertile ground for constitutional debates in the years following the Court's decision in *Martin*. In *Cohens v.*

Virginia (1821), for example, the Court addressed the related question of whether the Supreme Court had jurisdiction over appeals in state criminal cases. Chief Justice Marshall issued another strong defense of the Supreme Court's appellate power over the state courts, drawing on a similar logic to that employed by Story in *Martin*. In *Ableman v. Booth* (1858), the Court held that state courts could not exercise an analogous power over the federal system by ordering the release of federal prisoners on a writ of habeas corpus.

In the second half of the nineteenth century, the Court arguably adopted a narrower view of its own ability to decide state-law issues in appeals that also involved federal questions. In *Murdock v. Memphis* (1874), the Court held that although a revised version of Section 25 omitted language indicating that the Court could only decide cases on federal issues, the Court should nonetheless continue to do so. In *Eustis v. Bolles* (1893), the Court held that it could not exercise jurisdiction over cases in which there was a state issue that might have disposed of the case, even if the state court had decided a federal question incorrectly.

Discussion Questions

- To many modern Americans, the notion that the Supreme Court of the United States sits atop a judicial hierarchy that includes state courts may seem obvious. Was this resolution to the case inevitable? Are there ways in which the American legal system could continue to function effectively without Supreme Court review of state court judgments?
- Scholars disagree as to whether Chief Justice Marshall fully recused himself in *Martin*. Why is it important for judges to recuse themselves in cases where they have a financial interest? If Marshall had written the Court's opinion instead of Story, would this change your opinion of the outcome?

Documents

Judiciary Act of 1789

The Judiciary Act of 1789 was the main piece of legislation setting up the federal judicial system. Section 25 of the Act authorized the Supreme Court to hear appeals from state courts in several instances. The Virginia Supreme Court declared this part of the Act unconstitutional, ruling that the Constitution made the highest courts in the state and federal systems equal, and did not authorize Congress to make the Supreme Court superior to the state courts.

SEC . 25. And be it further enacted, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favour of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.

Document Source: Judiciary Act of 1789, § 25 (1789).

Report of the Attorney-General to the House of Representatives, December 31, 1790

Congress charged Attorney General Edmund Randolph with the task of determining what, if any, changes should be made to the structure of the fledgling judicial branch. Randolph, who had opposed the Constitution in part based on his objections to the vague makeup of the judiciary in Article III, advocated several changes to the system, including removing the Supreme Court's appellate jurisdiction over state courts. This was the power the Court eventually upheld in Martin.

That the avenue to the federal courts ought, in [cases the Judiciary Act permitted Supreme Court appellate review of state courts] be unobstructed is manifest. But in what stage, and by what form shall their interposition be prayed? There are perhaps but two modes; one of which is to convert the supreme court of the United States into an appellate tribunal over the supreme courts of the several states; the other to permit a removal by certiorari before trial.…

Does justice intitle a plaintiff to the first mode? When he institutes his suit, he has the choice of the state and federal courts. He elects the former, and to that election he ought to adhere.

Does justice intitle a defendant to it? Certainly not; should he be free to withdraw the cause by a certiorari at any time before trial, from the state court. For if with this privilege he proceeds without a murmur through the whole length of the state courts, ought he to catch a new chance from the federal courts? Have not both plaintiff and defendant thus acquiescing, virtually chosen their own judges?

Again. Let supposition itself be tortured: let the highest state courts, although sworn to support the Constitution, invalidate a treaty, a statute or an authority of the United States.

1. Such a decree could not invalidate them, nor impair the right of the lowest federal court to ratify them.
2. It would not disturb the tranquility of the United States. For even if aliens were the parties, the remonstrances of their prince might be repelled by shewing that they favored the state jurisdiction, by waiving the privilege of going into the federal courts.
3. Nor yet would the honor of the United States be sullied. For if it has not occurred, it may be conceived, that courts, whose jurisdictions is straitened in value, but whose decrees up to that value are final, may be refractory against a law, without diminishing the real dignity of government. Judicial uniformity is surely a public good, but its price may be too great if it can be purchased only by cherishing a power, which to say no more, cannot be incontestably proved.

4. At any rate, unless a party shall forsake the ordinary maxims of prudence, the hostility of the supreme state courts (if hostility be possible) will be displayed but once. For the remembrance of an adverse decision or an adverse temper in those courts, will inevitably proclaim the federal courts as the asylum to federal interests….

Document Source: *Report of the Attorney-General to the House of Representatives*, Dec. 31, 1790.

Supreme Court of the United States, Opinion in *Fairfax's Devisee v. Hunter's Lessee*, March 15, 1813

The Supreme Court's initial decision in the litigation that ultimately gave rise to Martin *focused on a separate but related question: to what extent did a federal treaty (an agreement with a foreign nation entered into by the President and ratified by the U.S. Senate) override state law? The Court determined that federal treaties protected the property rights of a British citizen that Virginia laws had attempted to revoke. The decision proved unpopular in some quarters and provoked the Virginia Supreme Court's defiant opinion in* Martin. *Justice William Johnson's dissenting opinion is omitted.*

It has been argued, that the act of 1785 amounts to a legislative appropriation of all the lands in controversy. That it must be considered as completely divesting the title of Denny Fairfax for the cause of alienage, and vesting it in the commonwealth—After the most mature reflection, we cannot subscribe to the argument—In acts of sovereignty so highly penal, it is against the ordinary rule to enlarge, by implication and inference, the extent of the language employed. It would be to declare purposes which the legislature have not chosen to avow, and to create vested estates, when the common law would pronounce a contrary sentence, and the guardians of the public interests have not expressed an intention to abrogate that law. If the legislature have proceeded upon the supposition that the lands were already vested in the commonwealth, we do not perceive how it helps the case. If the legislature, upon a mistake of facts, proceed to grant defective titles, we know of no rule of law which requires a Court to declare, in penal cases, that to be actually done which ought previously to have been done. Perhaps as to grants under the 4th sec. where entries under the act of 1782, ch. 33, it might not be too much to hold, that such grants conveyed no more than the title of the commonwealth, exactly in the same state as the commonwealth itself held it, viz. an inchoate right, to be reduced into possession and consummated by a suit in the nature, or with the effect, of an inquest of office. But we give no opinion on this point, because the patent of the original Plaintiff manifestly issued

under the succeeding section—and upon a construction, which we give to this section, it issued improvidently and passed no title whatever.—That construction is, that the unappropriated lands in the Northern Neck should be granted in the same manner as the other lands of the commonwealth, *when the title of the commonwealth was perfected by possession*. It seems to us difficult to contend, that the legislature meant to grant mere titles and rights of entry, of the commonwealth, to lands in the same manner as it did lands of which the commonwealth was in actual possession and seizin.—It would be selling suits and controversies through the whole country, and enacting a general statute in favor of maintenance, an offence which the common law has denounced with extraordinary severity. Consistent therefore with the manifest intention of the legislature, grants were to issue for lands in the Northern Neck, precisely in the same manner as for lands in other parts of the state, and under the same limitation, viz. that the commonwealth should have, at the time of the grant, a complete title and seizin.

We are the more confirmed in this construction by the act concerning escheators, (act 1779, ch. 45,) which regulates the manner of proceeding in cases of escheat, and was by a subsequent act, (act 1785, ch. 53,) expressly extended to the counties in the Northern Neck. This act of 1779 expressly prohibits the granting of any lands, seized into the hands of the commonwealth upon office found, till the lapse of twelve months after the return of the inquisition and verdict into the office of the general Court, and afterwards authorizes the proper escheator to proceed to sell in case no claim should be filed, within that time, and substantiated against the commonwealth. It is apparent, from this act, that it was not the intention of the legislature to dispose of lands, accruing by escheat, in the same manner as lands to which the commonwealth already possessed a perfect title. It has not been denied that the regulations of this act were designed to apply as well to titles accruing upon alienage, (which are not in strictness, escheats,) as upon forfeitures for other causes; and, but for the act of 1785, ch. 47, we do not perceive but that the vacant lands were, by the devise of lord Fairfax, in the Northern Neck, would have been completely within the act regulating proceedings upon escheats.

The real fact appears to have been, that the legislature supposed that the commonwealth were in actual seizin and possession of the vacant lands of lord Fairfax, either upon the principle that an alien enemy could not take by devise, or the belief that the acts of 1782, ch. 8, and ch. 33, had already vested the property in the commonwealth. In either case it was a mistake which surely ought not to be pressed to the injury of third persons.

But if the construction, which we have suggested, be incorrect, we think that, at all events, the title of Hunter, under the grant of 1789, cannot be considered as more extensive than the title of the commonwealth, viz. a title inchoate and imperfect; to be consummated by an actual entry under an inquest of office, or its equivalent, a suit and judgment at law by the grantee.

This view of the acts of Virginia, renders it wholly unnecessary to consider a point, which has been very elaborately argued at the bar, whether the treaty of peace, which declares "that no future confiscations shall be made," protects from forfeiture, under the municipal laws respecting alienage, estates held by British subjects at the time of the ratification of that treaty.—For we are well satisfied that the treaty of 1794 completely protects and confirms the title of Denny Fairfax, even admitting that the treaty of peace left him wholly unprovided for.

The 9th article is in these words: "It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of his majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell or devise the same to whom they please in like manner as if they were natives, and that neither they nor their heirs or assigns shall, so far as respects the said lands and the legal remedies incident thereto, be considered as aliens."

Now, we cannot yield to the argument that Denny Fairfax had no title, but a mere naked possession or trust estate. In our judgment, by virtue of the devise to him, he held a fee simple in his own right. At the time of the commencement of this suit (in 1791) he was in complete possession and seizin of the land. That possession and seizin continued up to and after the treaty of 1794, which being the supreme law of the land, confirmed the title to him, his heirs and assigns, and protected him from any forfeiture by reason of alienage. It was once in the power of the commonwealth of Virginia, by an inquest of office or its equivalent, to have vested the estate completely in itself or its grantee. But it has not so done, and its own inchoate title (and of course the derivative title, if any, of its grantee) has by the operation of the treaty become ineffectual and void.…

Document Source: *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. 603, 624–27 (1813).

Supreme Court of Virginia, Opinion in *Hunter v. Martin*, December 16, 1815

The Virginia Supreme Court rejected its federal counterpart's analysis in Fairfax's Devisee. *Instead, the Virginia court ruled that Section 25 of the Judiciary Act violated the U.S. Constitution by improperly permitting the federal Supreme Court to hear appeals from the highest court in each state. As such, the Virginia court reasoned that the Supreme Court had exceeded its jurisdiction in deciding the appeal and it refused to enforce the Supreme Court's original ruling. The court employed a seriatim style of announcement, in which each judge separately explained his own reasoning. A portion of Judge William Cabell's opinion is included below.*

[H]as the Congress of the United States, a right, under the federal constitution, to confer on the Supreme Court of the United States, a power to reexamine, by way of appeal or writ of error, the decision of the state Court; to affirm or reverse that decision; and in case of reversal, to command the state Court to enter and execute a judgment different for that which it had previously rendered? I am deeply sensible of the extreme delicacy and importance of this question. I have diligently examined it according to my best ability, uninfluenced, I trust, by any other feelings than an earnest desire to ascertain and give to the constitution, its just construction; being as little anxious for the abridgment of the federal, as for the extension of the state jurisdiction. My investigations have terminated in the conviction, that the constitution of the United States does not warrant the power which the act of Congress purports to confer on the federal judiciary.

It was justly observed, in the argument, that our system of government is sui generis, unlike any other that now exists, or that has ever existed. —Resting on certain great principles which we contend to be fundamental, immutable and of paramount obligation, it will not be found to want any of the powers of legitimate government; but, the distribution and modifications of those powers have no parallel. To the federal government are confided certain powers, specially enumerated, and principally affecting our foreign relations, and the general interests of the nation. These powers are limited, not only by their special enumeration, but by the positive declaration that, all powers not enumerated, or not prohibited to the states, are reserved to the states, or to the people. This demarcation of power is not vain and ineffectual. The free exercise, by the states, of the powers reserved to them, is as much sanctioned and guarded by the constitution of the United States, as is the free exercise, by the federal government, of the powers delegated to that government. If either be impaired, the system is deranged. The two governments, therefore, possessing, each, its portion of the divided sovereignty, although embracing the same territory, and operating on the same persons and frequently on the same subjects, are nevertheless separate from, and independent of, each other. From this position, believed to be incontrovertible, it necessarily results that each government must act by its own organs: from no other can it expect, command, or enforce obedience, even as to objects coming within the range of its powers.…

It was contended by the counsel for the appellee, that if the appellate power of the Federal Courts be denied, there will be no other mode by which congress can extend the judicial power of the United States to the cases of federal cognizance; that there will, consequently, be no uniformity of decision; that the general government will be deprived of the power of executing its laws and treaties; that the purposes for which that government was adopted, will be defeated, and that, in many instances, the peace of the country will be endangered. If these evils were to follow our decision, I should nevertheless be constrained

to pronounce it, convinced as I am, that the defects of our system of government must be remedied, not by the judiciary, but by the sovereign power of the people. But I cannot perceive that any such evils are likely to arise. The powers vested by the constitution, in the congress of the United States, were delegated for purposes essential to the general welfare, and ought not to be defeated or impaired: and I have no doubt that one of these powers is that of making all laws, necessary and proper, for extending the judicial power of the United States, to all the cases, to which the constitution declares that that power shall extend. I must not, however, be understood as impeaching the concurrent jurisdiction, original and final of the State Courts, provided the parties shall elect that jurisdiction. I do not understand the counsel for the appellee as denying the concurrent original jurisdiction of the State Courts; nor can I perceive any better reason for denying their final jurisdiction in all those cases which the parties shall submit to their decision. All the purposes of the constitution of the United States will be answered by the erection of Federal Courts, into which any party, plaintiff or defendant, concerned in a case of federal cognizance, may carry it for adjudication; for, it was never intended to force the parties into those courts against their will. The right of the plaintiff, to have his case tried before the federal courts, is unquestionable, as he may institute his suit in the State or Federal Courts, at his own option; and it will be sufficient for the defendant sued in a State Court, if the act of congress shall give him the power, to remove the case at any time before judgment into the Federal Courts. I cannot doubt that congress may give this power consistently with the constitution; for, otherwise, the judicial power of the United States might be eluded at the pleasure of any plaintiff. If then the plaintiff shall elect the state jurisdiction, by bringing his suit in the State Court, and the defendant shall also elect it by submitting to it, they must, from the nature of the judicial power reserved to the states, be concluded by the judgment, unless there be an appeal to some Superior Court, which I have endeavoured to shew is not the case with respect to the Federal Courts. If, after a judgment in a State Court, in any such case, there shall be a complaint of a want of uniformity of decision, of a defective execution of the laws of the union, of a violation of rights under the constitution, laws or treaties of the United States, or complaints of any other kind whatsoever, the answer to them all, both in relation to foreigners and others, is that the parties have elected their own tribunal; a tribunal, over which the general government has no control, and for whose decisions, therefore, it owes no responsibility.…

Document Source: *Hunter v. Martin*, 18 Va. 1, 4, 9 (1815).

Supreme Court of the United States, Opinion in *Martin v. Hunter's Lessee*, March 20, 1816

Justice Joseph Story's opinion for the Court in Martin *rejected the Virginia court's logic and presented a strong vision of federal power. The Court did not risk a standoff with the state court that could have resulted from sending the case back down to the Virginia system, instead issuing an order in Martin's favor.*

Story, J., delivered the opinion of the court.…

The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by "the people of the United States." There can be no doubt that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be, that the people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The constitution was not, therefore, necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions, for the powers of the states depend upon their own constitutions; and the people of every state had the right to modify and restrain them, according to their own views of policy or principle. On the other hand, it is perfectly clear that the sovereign powers vested in the state governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States.…

The third article of the constitution is that which must principally attract our attention. The 1st. section declares, "the judicial power of the United States shall be vested in one supreme court, and in such other inferior courts as the congress may, from time to time, ordain and establish." The 2d section declares, that "the judicial power shall extend to all cases in law or equity, arising under this constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under the grants of different states; and between a state or the citizens thereof, and foreign states, citizens, or subjects." It then proceeds to declare, that "in all cases affecting ambassadors, other public

ministers and consuls, and those in which a state shall be a party, the supreme court shall have *original jurisdiction*. In all the other cases before mentioned the supreme court shall have *appellate jurisdiction*, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make." …

As,… by the terms of the constitution, the appellate jurisdiction is not limited as to the supreme court, and as to this court it may be exercised in all other cases than those of which it has original cognizance, what is there to restrain its exercise over state tribunals in the enumerated cases? The appellate power is not limited by the terms of the third article to any particular courts. The words are, "the judicial power (which includes appellate power) shall extend to *all cases*," &c., and "in all other cases before mentioned the supreme court shall have appellate jurisdiction." It is the *case*, then, and not *the court*, that gives the jurisdiction. If the judicial power extends to the case, it will be in vain to search in the letter of the constitution for any qualification as to the tribunal where it depends. It is incumbent, then, upon those who assert such a qualification to show its existence by necessary implication. If the text be clear and distinct, no restriction upon its plain and obvious import ought to be admitted, unless the inference be irresistible.…

[I]t is plain that the framers of the constitution … contemplate[d] that cases within the judicial cognizance of the United States not only might but would arise in the state courts, in the exercise of their ordinary jurisdiction. With this view the sixth article declares, that "this constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." It is obvious that this obligation is imperative upon the state judges in their official, and not merely in their private, capacities. From the very nature of their judicial duties they would be called upon to pronounce the law applicable to the case in judgment. They were not to decide merely according to the laws or constitution of the state, but according to the constitution, laws and treaties of the United States—"the supreme law of the land." …

It has been argued that … an appellate jurisdiction over state courts is inconsistent with the genius of our governments, and the spirit of the constitution. That the latter was never designed to act upon state sovereignties, but only upon the people, and that if the power exists, it will materially impair the sovereignty of the states, and the independence of their courts. We cannot yield to the force of this reasoning; it assumes principles which we cannot admit, and draws conclusions to which we do not yield our assent.

It is a mistake that the constitution was not designed to operate upon states, in their corporate capacities. It is crowded with provisions which restrain or annul the sovereignty

of the states in some of the highest branches of their prerogatives. The tenth section of the first article contains a long list of disabilities and prohibitions imposed upon the states. Surely, when such essential portions of state sovereignty are taken away, or prohibited to be exercised, it cannot be correctly asserted that the constitution does not act upon the states.... The courts of the United States can, without question, revise the proceedings of the executive and legislative authorities of the states, and if they are found to be contrary to the constitution, may declare them to be of no legal validity. Surely the exercise of the same right over judicial tribunals is not a higher or more dangerous act of sovereign power.

Nor can such a right be deemed to impair the independence of state judges. It is assuming the very ground in controversy to assert that they possess an absolute independence of the United States. In respect to the powers granted to the United States, they are not independent; they are expressly bound to obedience by the letter of the constitution; and if they should unintentionally transcend their authority, or misconstrue the constitution, there is no more reason for giving their judgments an absolute and irresistible force, than for giving it to the acts of the other co-ordinate departments of state sovereignty....

A motive of another kind, perfectly compatible with the most sincere respect for state tribunals, might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity of *uniformity* of decisions throughout the whole United States, upon all subjects within the purview of the constitution. Judges of equal learning and integrity, in different states, might differently interpret a statute, or a treaty of the United States, or even the constitution itself: If there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable; and it cannot be believed that they could have escaped the enlightened convention which formed the constitution. What, indeed, might then have been only prophecy, has now become fact; and the appellate jurisdiction must continue to be the only adequate remedy for such evils.

There is an additional consideration, which is entitled to great weight. The constitution of the United States was designed for the common and equal benefit of all the people of the United States. The judicial power was granted for the same benign and salutary purposes. It was not to be exercised exclusively for the benefit of parties who might be plaintiffs, and would elect the national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their privil[e]ges, before the same forum. Yet, if the construction contended for be correct, it will follow, that as the plaintiff may always elect the state court, the defendant may be deprived of all the security which the constitution intended in aid of his rights....

On the whole, the court are of opinion, that the appellate power of the United States does extend to cases pending in the state courts; and that the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases, by a writ of error, is supported by the letter and spirit of the constitution. We find no clause in that instrument which limits this power; and we dare not interpose a limitation where the people have not been disposed to create one.

Strong as this conclusion stands upon the general language of the constitution, it may still derive support from other sources. It is an historical fact, that this exposition of the constitution, extending its appellate power to state courts, was, previous to its adoption, uniformly and publicly avowed by its friends, and admitted by its enemies, as the basis of their respective reasonings, both in and out of the state conventions. It is an historical fact, that at the time when the judiciary act was submitted to the deliberations of the first congress, composed, as it was, not only of men of great learning and ability, but of men who had acted a principal part in framing, supporting, or opposing that constitution, the same exposition was explicitly declared and admitted by the friends and by the opponents of that system. It is an historical fact, that the supreme court of the United States have, from time to time, sustained this appellate jurisdiction in a great variety of cases, brought from the tribunals of many of the most important states in the union, and that no state tribunal has ever breathed a judicial doubt on the subject, or declined to obey the mandate of the supreme court, until the present occasion. This weight of contemporaneous exposition by all parties, this acquiescence of enlightened state courts, and these judicial decisions of the supreme court through so long a period, do, as we think, place the doctrine upon a foundation of authority which cannot be shaken, without delivering over the subject to perpetual and irremediable doubts.…

It is the opinion of the whole court, that the judgment of the court of appeals of Virginia, rendered on the mandate in this cause, be reversed, and the judgment of the district court, held at Winchester, be, and the same is hereby affirmed.

Document Source: *Martin v. Hunter's Lessee*, 14 U.S. 304, 324–25, 327–28, 338–39, 340–41, 342–44, 347–49, 351–52 (1816).

Justice William Johnson, Jr., Concurring Opinion in *Martin v. Hunter's Lessee*, March 20, 1816

Johnson, J.

It will be observed in this case, that the court disavows all intention to decide on the right to issue compulsory process to the state courts; thus leaving us, in my opinion, where

the constitution and laws place us—supreme over persons and cases as far as our judicial powers extend, but not asserting any compulsory control over the state tribunals.

In this view I acquiesce in their opinion, but not altogether in the reasoning, or opinion, of my brother who delivered it. Few minds are accustomed to the same habit of thinking, and our conclusions are most satisfactory to ourselves when arrived at in our own way.

I have another reason for expressing my opinion on this occasion. I view this question as one of the most momentous importance; as one which may affect, in its consequences, the permanence of the American union. It presents an instance of collision between the judicial powers of the union, and one of the greatest states in the union, on a point the most delicate and difficult to be adjusted. On the one hand, the general government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers. Force, which acts upon the physical powers of man, or judicial process, which addresses itself to his moral principles or his fears, are the only means to which governments can resort in the exercise of their authority. The former is happily unknown to the genius of our constitution, except as far as it shall be sanctioned by the latter; but let the latter be obstructed in its progress by an opposition which it cannot overcome or put by, and the resort must be to the former, or government is no more.

On the other hand, so firmly am I persuaded that the American people can no longer enjoy the blessings of a free government, whenever the state sovereignties shall be prostrated at the feet of the general government, nor the proud consciousness of equality and security, any longer than the independence of judicial power shall be maintained consecrated and intangible, that I could borrow the language of a celebrated orator, and exclaim, "I rejoice that Virginia has resisted."

Yet here I must claim the privilege of expressing my regret, that the opposition of the high and truly respected tribunal of that state had not been marked with a little more moderation. The only point necessary to be decided in the case then before them was, "whether they were bound to obey the mandate emanating from this court?" But in the judgment entered on their minutes, they have affirmed that the case was, in this court, coram non judice, or, in other words, that this court had not jurisdiction over it.

This is assuming a truly alarming latitude of judicial power. Where is it to end? It is an acknowledged principle of, I believe, every court in the world, that not only the decisions, but every thing done under the judicial process of courts, not having jurisdiction, are, *ipso facto*, void. Are, then, the judgments of this court to be reviewed in every court of the union? and is every recovery of money, every change of property, that has taken place under our process, to be considered as null, void, and tortious?

We pretend not to more infallibility than other courts composed of the same frail materials which compose this. It would be the height of affectation to close our minds

upon the recollection that we have been extracted from the same seminaries in which originated the learned men who preside over the state tribunals. But there is one claim which we can with confidence assert *in our own name* upon those tribunals—the profound, uniform, and unaffected respect which this court has always exhibited for state decisions, give us strong pretensions to judicial comity. And another claim I may assert, *in the name of the American people*; in this court, every state in the union is represented; we are constituted by the voice of the union, and when decisions take place, which nothing but a spirit to give ground and harmonize can reconcile, ours is the superior claim upon the comity of the state tribunals. It is the nature of the human mind to press a favourite hypothesis too far, but magnanimity will always be ready to sacrifice the pride of opinion to public welfare.…

To me the constitution appears, in every line of it, to be a contract, which, in legal language, may be denominated tripartite. The parties are the people, the states, and the United States. It is returning in a circle to contend, that it professes to be the exclusive act of the people, for what have the people done but to form this compact? That the states are recognised as parties to it is evident from various passages, and particularly that in which the United States guaranty to each state a republican form of government.

The security and happiness of the whole was the object, and, to prevent disseption and collision, each surrendered those powers which might make them dangerous to each other. Well aware of the sensitive irritability of sovereign states, where their wills or interests clash, they placed themselves, with regard to each other, on the footing of sovereigns upon the ocean; where power is mutually conceded to act upon the individual, but the national vessel must remain unviolated. And to remove all ground for jealousy and complaint, they relinquish the privilege of being any longer the exclusive arbiters of their own justice, where the rights of others come in question, or the great interests of the whole may be affected by those feelings, partialities, or prejudices, which they meant to put down for ever.…

I should feel the more hesitation in adopting the opinions which I express in this case, were I not firmly convinced that they are practical, and may be acted upon without compromitting the harmony of the union, or bringing humility upon the state tribunals. God forbid that the judicial power in these states should ever, for a moment, even in its humblest departments, feel a doubt of its own independence. Whilst adjudicating on a subject which the laws of the country assign finally to the revising power of another tribunal, it can feel no such doubt. An anxiety to do justice is ever relieved by the knowledge that what we do is not final between the parties. And no sense of dependence can be felt from the knowledge that the parties, not the court, may be summoned before another tribunal. With this view, by means of laws, avoiding judgments obtained in the state courts in cases over which congress has constitutionally assumed jurisdiction, and

inflicting penalties on parties who shall contumaciously persist in infringing the constitutional rights of others—under a liberal extension of the writ of injunction and the *habeas corpus ad subjiciendum*, I flatter myself that the full extent of the constitutional revising power may be secured to the United States, and the benefits of it to the individual, without ever resorting to compulsory or restrictive process upon the state tribunals; a right which, I repeat again, congress has not asserted, nor has this court asserted, nor does there appear any necessity for asserting.…

Document Source: *Martin v. Hunter's Lessee*, 14 U.S. 304, 362–65, 373–74, 381–82 (1816).

Simon Sobeloff, *Federal Bar Journal*, 1964

In this piece, Court of Appeals for the Fourth Circuit Judge Simon Sobeloff addresses whether Marshall acted ethically in Martin. *As Judge Sobeloff suggested, there is little direct proof that Marshall participated in the decision, though many scholars have assumed he did.*

The suggestion has been voiced that conflicting interests influenced judges in some important decisions in the early history of this country. For example, it is widely suspected that Chief Justice Marshall had a strong influence in the case of *Martin v. Hunter's Lessee* and its predecessor, *Fairfax's Devisee v. Hunter's Lessee*, even though he disqualified himself from participating in the two cases. Marshall and his brother had a direct financial interest in the cases, as their title to a large tract of land depended on the outcome. While Justice Story wrote for the Court in both cases and based the decisions, which were favorable to Marshall, on a treaty between the United States and England,

> [I]t has been commonly supposed that Marshall practically dictated Story's two opinions …, and certain writers have stated this to be the fact. Story himself, fifteen years afterwards, declared that the Chief Justice had "concurred in every word of the second opinion"; yet in a letter to his brother concerning the effect of Story's opinion upon another suit in the State court at Winchester, involving the same question, Marshall says: "The case of Hunter & Fairfax is very absurdly put on the treaty of 94."

The latter assertion, made by Marshall more than a decade after the favorable decisions, would tend to rebut the implication from Story's letter that Marshall had collaborated in the opinions.

Indeed, it has been affirmed, and not without historic basis, that in the primitive days of our highest court practically every member was financially interested in some case coming up for final decision. And Justice Story, during many of the years that he sat on

the Supreme Court bench was president of a bank. This would have been unthinkable behavior for a Justice today.…

Document Source: Simon Sobeloff, "Striving for Impartiality in the Federal Courts: Conflicts of Interest, a Symposium," *Federal Bar Journal* 24 (1964): 288 (footnotes omitted).

Cases that Shaped the Federal Courts

This series includes case summaries, discussion questions, and excerpted documents related to cases that had a major institutional impact on the federal courts. The cases address a range of political and legal issues including the types of controversies federal courts could hear, judicial independence, the scope and meaning of "the judicial power," remedies, judicial review, the relationship between federal judicial power and states' rights, and the ability of federal judges to perform work outside of the courtroom.

- *Hayburn's Case* (1792). Could Congress require the federal courts to perform non-judicial duties?
- *Chisholm v. Georgia* (1793). Could states be sued in federal court by individual citizens of another state?
- *Marbury v. Madison* (1803). Could federal courts invalidate laws made by Congress that violated the Constitution?
- *Fletcher v. Peck* (1810). Could federal courts strike down state laws that violated the Constitution?
- *United States v. Hudson and Goodwin* (1812). Did the federal courts have jurisdiction over crimes not defined by Congress?
- *Martin v. Hunter's Lessee* (1816). Were state courts bound to follow decisions issued by the Supreme Court of the United States?
- *Osborn v. Bank of the United States* (1824). Could Congress grant the Bank of the United States the right to sue and be sued in the federal courts?
- *American Insurance Co. v. Canter* (1828). Did the Constitution require Congress to give judges of territorial courts the same tenure and salary protections afforded to judges of federal courts located in the states?
- *Louisville, Cincinnati, and Charleston Rail-road Co. v. Letson* (1844). Should a corporation be considered a citizen of a state for purposes of federal jurisdiction?
- *Ableman v. Booth* (1859). Could state courts issue writs of habeas corpus against federal authorities?
- *Gordon v. United States* (1865). Could the Supreme Court hear an appeal from a federal court whose judgments were subject to revision by the executive branch?
- *Ex parte McCardle* (1869). Could Congress remove a pending appeal from the Supreme Court's jurisdiction?
- *Ex parte Young* (1908). Could a federal court stop a state official from enforcing an allegedly unconstitutional state law?
- *Moore v. Dempsey* (1923). How closely should federal courts review the fairness of state criminal trials on petitions for writs of habeas corpus?

- *Frothingham v. Mellon* (1923). Was being a taxpayer sufficient to give a plaintiff the right to challenge the constitutionality of a federal statute?
- *Crowell v. Benson* (1932). What standard should courts apply when reviewing the decisions of executive agencies?
- *Erie Railroad Co. v. Tompkins* (1938). What source of law were federal courts to use in cases where no statute applied and the parties were from different states?
- *Railroad Commission of Texas v. Pullman Co.* (1941). When should a federal court abstain from deciding a legal issue in order to allow a state court to resolve it?
- *Brown v. Allen* (1953). What procedures should federal courts use to evaluate the fairness of state trials in habeas corpus cases?
- *Monroe v. Pape* (1961). Did the Ku Klux Klan Act of 1871 permit lawsuits in federal court against police officers who violated the constitutional rights of suspects without authorization from the state?
- *Baker v. Carr* (1962). Could a federal court hear a constitutional challenge to a state's apportionment plan for the election of state legislators?
- *Glidden Co. v. Zdanok* (1962). Were the Court of Claims and the Court of Customs Appeals "constitutional courts" exercising judicial power, or "legislative courts" exercising powers of Congress?
- *United States v. Allocco* (1962). Were presidential recess appointments to the federal courts constitutional?
- *Walker v. City of Birmingham* (1967). Could civil rights protestors challenge the constitutionality of a state court injunction, having already been charged with contempt of court for violating the injunction?
- *Bivens v. Six Unknown Named Agents* (1971). Did the Fourth Amendment create an implied right to sue officials who conducted illegal searches and seizures?
- *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982). Did the Bankruptcy Reform Act of 1978 violate the Constitution by granting too much judicial power to bankruptcy judges?
- *Morrison v. Olson* (1988). Could Congress empower federal judges to appoint independent counsel investigating executive branch officials?
- *Mistretta v. United States* (1989). Could Congress create an independent judicial agency to guide courts in setting criminal sentences?
- *Lujan v. Defenders of Wildlife* (1992). Could an environmental organization sue the federal government to challenge a regulation regarding protected species?
- *City of Boerne v. Flores* (1997). Could Congress reverse the Supreme Court's interpretation of the Constitution through a statute purportedly enforcing the Fourteenth Amendment?